

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHARLES E. UITTS
Claimant

VS.

WHITAKER CONSTRUCTION, INC.
Respondent

AND

TRAVELERS CASUALTY & SURETY CO.
Insurance Carrier

Docket No. **1,030,468**

ORDER

Claimant requests review of the July 30, 2012 Award by Special Administrative Law Judge (SALJ) John C. Nodgaard. The Board heard oral argument on December 4, 2012. The Workers Compensation Director appointed E.L. Kinch of Wichita, Kansas, to serve as Board Member Pro Tem in place of John Carpinelli, who recused himself from this proceeding.

APPEARANCES

William L. Phalen of Pittsburg, Kansas, appeared for claimant. William L. Townsley III, of Wichita, Kansas, appeared for respondent and its insurance carrier.

RECORD AND ANALYSIS

The parties agreed at oral argument that the deposition of Dr. John F. McMaster taken on September 28, 2009, was not listed in the Award as part of the record, but was considered by the SALJ.¹ However, the report of Dr. Robert Eyster's court-ordered medical evaluation was not listed in the award as part of the record. It was not provided to the ALJ by Dr. Eyster or by either counsel. Dr. Eyster's report was therefore not considered by the SALJ. Respondent's counsel is directed to provide Dr. Eyster's September 20, 2007 IME report to the SALJ.

¹ The SALJ quoted and discussed Dr. McMaster's testimony on pages 5-6 of the award.

Therefore, the Board finds that the award is vacated and the claim remanded to the SALJ with directions to consider the entire record, including the report of Dr. Eyster, and to thereafter prepare another award. The Board will not address at this time the substantive issues raised by the parties.

The Board does not retain jurisdiction of this matter. If a party desires Board review of any further decisions by the SALJ, an appropriate appeal must be timely filed.

AWARD

WHEREFORE, it is the Board's decision that the Award of SALJ John C. Nodgaard dated July 30, 2012, should be, and hereby is, vacated and the claim remanded to the SALJ for a determination of the issues based upon the entire record.

IT IS SO ORDERED.

Dated this _____ day of January, 2013.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant,
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